

**STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

DEPT. OF FINANCIAL INSTITUTIONS,)	
COMPLIANCE DIVISION,)	
)	Docket No.: 03.06-101082J
Petitioner,)	
)	
v.)	
)	TDFI No.: 08-21-C
4U DIRECT, INC. d/b/a)	
NATIONS HOME LENDING CENTER)	
)	
Respondent.)	

NOTICE OF DEFAULT AND INITIAL ORDER

This matter came to be heard on January 27, 2009, at 10:00 a.m. central standard time, before Administrative Judge William J. Reynolds of the Administrative Procedures Division of the Tennessee Department of State, sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter, "Commissioner"). The Compliance Division of the Tennessee Department of Financial Institutions (hereinafter, "Petitioner") was represented by Derek Church, a staff attorney with the Department of Financial Institutions. No attorney has made an appearance on behalf of 4U Direct, Inc. d/b/a Nations Home Lending Center (hereinafter, "Respondent").

Judge William J. Reynolds is vested with jurisdiction to hear this matter on behalf of the Commissioner pursuant to Tenn. Code Ann. § 45-1-105 and the Tennessee Residential Lending, Brokerage and Servicing Act of 1988 as amended, at Tenn. Code Ann. §§ 45-13-101 *et seq.* (hereinafter, "Mortgage Act"). This matter is a contested case proceeding pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*, initiated by the Petitioner seeking an order directing the Respondent to:

(1) pay a civil monetary penalty of up to thirty thousand dollars (\$30,000) for the three (3) violations of Tenn. Code Ann. § 45-13-126(a); and, (2) cease and desist violating Tenn. Code Ann. § 45-13-112(b) by paying its examination fee of two thousand four hundred and seventy-five dollars (\$2,475).

After consideration of the pleadings, the argument of counsel, and the entire record as a whole, it is **DETERMINED** that the maximum relief requested by the Petitioner in the Notice of Charges **SHOULD** be granted. Said decision is based on the Preliminary Rulings and Order of Default, Findings of Fact, and Conclusions of Law stated below.

I. PRELIMINARY RULINGS AND ORDER OF DEFAULT

At hearing of this matter on January 27, 2009, the Petitioner's motion for default was granted pursuant to Tenn. Code Ann. § 4-5-309(a) after the Respondent failed to appear at the hearing, after having proper notice thereof. The record indicates that the Respondent was served with a Notice of Opportunity for a Hearing, a Notice of Charges, and Requests for Admission on June 30, 2008, that the Respondent did not request a hearing, and that an Order issued by this honorable court on December 16, 2008 setting the time, date, and location of the hearing was sent to four (4) different addresses for the Respondent. Having held the Respondent in **DEFAULT**, the matter was tried as uncontested.

On January 16, 2008, the Petitioner filed a Motion to Have Requests for Admission Deemed Admitted pursuant to Tenn. R. Civ. P. 36.01. Having found that the Respondent was served with the Requests for Admission with the Notice of Charges on June 30, 2008, and that the Respondent failed to serve upon the Petitioner a written

response or objection to the Requests within forty-five (45) days, the Petitioner's Motion was granted at the hearing.

On January 16, 2009, the Petitioner provided to the Respondent and filed with the court an Affidavit of Melody Anne Johnson and an Affidavit of Carl Bryant Scott, as well as notice that each would be introduced as evidence at the hearing. The Respondent did not object or deliver a request to cross-examine either affiant within seven (7) days, and said affidavits were admitted pursuant to Tenn. Code Ann. § 4-5-313.

The Findings of Fact below are based on the admitted Requests for Admission as well as the affidavits of Melody Anne Johnson and Carl Bryant Scott.

II. FINDINGS OF FACT

1. The Respondent is a for-profit Florida corporation.
2. The Respondent's principal office is located at 401 Fairway Drive, Suite 200, Deerfield Beach, Florida 33441.
3. The Respondent's Certificate of Authority to do business in Tennessee was administratively revoked as of August 27, 2007.
4. At all times relevant hereto, the Respondent was registered under the Tennessee Residential Lending, Brokerage and Servicing Act of 1988, Tenn. Code Ann. §§ 45-13-101, *et seq.* (hereinafter, "Mortgage Act"), having been issued certificate of registration number 2260 by the Department.
5. At all times relevant hereto, the Respondent maintained an office at 1350 East Newport Center Drive, Suite 101, Deerfield Beach, Florida 33442.
6. At all times relevant hereto, the Respondent's managing principal under the Mortgage Act was Beverly Shanahan.

7. Over several days on and between August 20, 2007 and August 30, 2007, the Petitioner had two (2) of its compliance examiners by the names of Frank Y. Barnes and David Kelly (hereinafter, "Examiners"), conduct a compliance examination (hereinafter, "Examination") of the Respondent in accordance with Tenn. Code Ann. § 45-13-112, during the course of which the Examiners reviewed and collected several mortgage loan records and files of the Respondent.

8. On or about August 30, 2007, the Examiners completed a Report of Examination (hereinafter, "Report") in which they cited the Respondent for several violations of the Mortgage Act.

9. On or about August 30, 2007, the Examiners gave the Respondent a copy of the Report as well as an invoice for the Examination (hereinafter, "Invoice").

10. The Invoice is in the amount of two thousand four hundred and seventy-five dollars (\$2,475) (hereinafter, "Exam Fee") and states that "Examination fee is due 30 days from the date of this exam."

11. In the Report, under the "Violations from Examination" section, at Violation 7, the Examiners cited the Respondent for violating Tenn. Code Ann. § 45-13-126(a) by allowing an individual by the name of Kay Mitchell to perform mortgage loan origination services for the Respondent while said individual was not registered with the Department as a mortgage loan originator.

12. Kay Mitchell performed mortgage loan originator services for the Respondent on loan number 5550909680, which was closed on April 28, 2005.

13. Kay Mitchell performed mortgage loan originator services for the Respondent on loan number 5550727929, which was closed on May 10, 2005.

14. Kay Mitchell performed mortgage loan originator services for the Respondent on loan number 6410346652, which was closed on May 13, 2005.

15. Kay Mitchell was not registered by the Department as a MLO of the Respondent at any time prior to June 6, 2006.

16. The Respondent has not made any payments to the Department towards its Exam Fee, and said fee is currently due and owed.

III. CONCLUSIONS OF LAW

17. Tenn. Code Ann. § 45-13-126(a) provides that, “[b]efore an individual may provide services as a mortgage loan originator for a licensee or registrant, that individual shall be registered with the commissioner in affiliation with that licensee or registrant.” Mortgage loan origination services are defined at Tenn. Code Ann. §§ 45-13-102(12) and (13) to include the origination of a mortgage loan.

18. The Findings of Fact set forth above show by a preponderance of the evidence that the Respondent, while a registrant under the Mortgage Act, committed three (3) violations of Tenn. Code Ann. § 45-13-126(a) by having Kay Mitchell perform mortgage loan origination services on three (3) mortgage loans prior to Kay Mitchell being registered with the Department as a mortgage loan originator of the Respondent.

19. Regarding examination fees, Tenn. Code Ann. § 45-13-112(b) provides that a “licensee or registrant **shall** pay to the commissioner the reasonable and actual expenses of the investigation and examination...in addition to all other fees, taxes and costs now required by law.”

20. The Findings of Fact set forth above show by a preponderance of the evidence that the Respondent has violated and is violating Tenn. Code Ann. § 45-13-

112(b) by refusing to pay its examination fee of two thousand four hundred and seventy-five dollars (\$2,475) to the Commissioner.

21. Tenn. Code Ann. § 45-13-116 provides that, if after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Mortgage Act, the Commissioner may take any or all of the following actions:

- (1) Order the person to cease and desist violating this chapter or any administrative rule issued pursuant to this chapter;
- (2) Require the refund of any interest, fees, or charges collected by such person in violation of this chapter or any administrative rule issued pursuant to this chapter; and/or
- (3) Order the person to pay the commissioner a civil monetary penalty of not more than ten thousand dollars (\$10,000) for each violation of this chapter or administrative rule issued pursuant to this chapter.

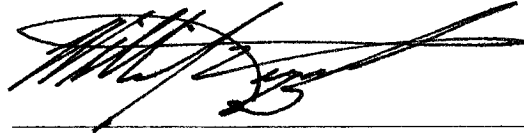
22. Because the Findings of Fact are sufficient to establish by a preponderance of the evidence that the Respondent has committed the violations of the Mortgage Act stated herein, Tenn. Code Ann. § 45-13-116 provides grounds to order the Respondent to pay a civil monetary penalty of thirty thousand dollars (\$30,000) and to cease and desist violating Tenn. Code Ann. § 45-13-112(b) by paying its examination fee of two thousand four hundred and seventy-five dollars (\$2,475).

IV. ORDER

IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Respondent, 4U Direct, Inc. d/b/a Nations Home Lending Center, shall pay to the Department of Financial Institutions a civil monetary penalty of thirty thousand dollars (\$30,000) for the three (3) violations of Tenn. Code Ann. § 45-13-108(a)(3), and shall cease and desist violating Tenn. Code Ann. § 45-13-112(b) by paying to the Department

of Financial Institutions its examination fee of two thousand four hundred and seventy-five dollars (\$2,475).

This Initial Order entered and effective this 3rd day of FEB, 2009.

A handwritten signature in black ink, appearing to read "William J. Reynolds", written over a horizontal line.

William J. Reynolds, Administrative Judge

Filed in the Administrative Procedures Division this 3rd day of FEB,
2009.

A handwritten signature in black ink, appearing to read "Thomas G. Stovall", written over a horizontal line.

Thomas G. Stovall, Director

APPENDIX A TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.